



U.S. Department of Justice

Carmen M. Ortiz
United States Attorney
District of Massachusetts

Main Reception: (617) 748-3100

John Joseph Moakley United States Courthouse
1 Courthouse Way
Suite 9200
Boston, Massachusetts 02210

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BY ELECTRONIC AND REGULAR MAIL

Timothy Watkins, Esq.
William Fick, Esq.
Miriam Conrad, Esq.
Judy Clarke, Esq.
David Bruck, Esq.
Federal Defender's Office
51 Sleeper Street, 5th Floor
Boston, MA 02210

Re: United States v. Dzhokhar Tsarnaev, Crim. No. 13-10200- GAO

Dear Counsel:

We are writing in response to your outstanding discovery requests, and to provide you with additional materials in the above-captioned case.

Production Materials. Enclosed with this letter are five discs. Two of them are labeled DT-0033035 – DT-0044236, and DT-0032106 -- DT-0033034 respectively. They contain additional photos, videos, reports, and electronic data that you have requested in discovery. Indices for these discs are being provided to you by email. (Please note that DT-0039602 – DT-0039670 are placeholders for some corrupted photos which we will provide to you when replacements are obtained.) In addition, a 500GB hard drive labeled DT-0044240 is included, as well as a courtesy copy. The index of materials on the hard drive is labeled as DT-0044241. The remaining three discs are labeled DT-0044237, DT-0044238, and DT-0044239, and are associated with a T-Mobile Cellphone extraction described below.

The so-called 1A list. We have attempted to identify each of the 170-plus items that you requested in your letter of January 28, 2014. We object to the production of virtually all of them at this time because they are not Rule 16 material, nor favorable and material within the meaning of Brady, or they are Jencks material. Nevertheless, in the spirit of cooperation, we have produced most of them. More specifically, some of them we have already produced, some we

are producing today, some we intend to produce early next week, and some we decline to produce altogether on the grounds that they are not discoverable. In cases where we have already produced a requested item or are producing it today, we have annotated and included the list you provided us with the item's Bates number. In cases where we intend to produce an item early next week, we have annotated the list either with the word "DT-0044242" or the word "forthcoming," both in red ink. In cases where we decline to produce an item, we have annotated the list with the initials "ND."

The list of evidence at the FBI Lab in Quantico. In an effort to further ensure that you have complete and accurate lists of evidence, we are emailing you today an updated copy of the list of discoverable items which are located at Quantico along with their 1B numbers in Excel format.

Quantico visit. Although the FBI Lab at Quantico had proposed the weeks of March 17 and March 24, 2014 to permit you to inspect the evidence at that location, we understand that timing does not work for you. The Lab can accommodate you the week of April 6, 2014. If that week is inconvenient, the next available week will be after the 2014 Boston Marathon, given the additional security measures occasioned this year.

Tips and Leads. We have previously offered, and you have recently requested, access to the thousands of "tips" received by the FBI in connection with this investigation. In light of the volume of this information, the difficulty of viewing it without certain software, and our inability to redact sensitive and personal information, we will make it possible for you to review this information at the FBI or the US Attorney's Office. This information is not Rule 16 material, and virtually all of it (if not all) is neither favorable or material within the meaning of Brady. Consequently, we do not believe we are required to copy it for you, and we decline to do so.

Surveillance video and photos. We have previously provided to you several terabytes of data that consist largely of videos and photos taken by spectators along the Marathon route on Boylston Street, as well as surveillance video from establishments located on Boylston Street, even though the vast bulk of it is neither Rule 16 material nor favorable or material within the meaning of Brady. To the extent that you wish to view the balance of all such information in our possession, which constitutes multiple terabytes of data, and which would be time-consuming and burdensome to copy, we object. The information is not discoverable under Rule 16 or Brady. Nevertheless, without waiving that objection, we will make the requested information available to you on a computer at the FBI or the US Attorney's office, but we decline to provide a copy of it.

T-Mobile HTC Cellphone-61 Laurel-1 W4. The three discs labelled DT-0044237, DT-0044238, and DT-0044239 contain the physical extraction of this phone, which belonged to Tamerlan Tsarnaev.

Q26-Katherine's iPhone. Our only extraction of this phone was provided to you on January 8, 2014. Currently, we do not plan to do another.

Garmin GPS from Mercedes. Our only extraction of this device has already been produced to you. Currently, we do not plan to do another.

Black phone iPhone-63 and 16 gb iPhone 4. Agents were not able to "power up" either of these telephones or extract information from them through a cable.

Business Records. We have provided you with numerous business records and are in the process of processing additional records for you. We can provide you with a list of the records that we have and will provide you, but we decline to provide you information about what we are not making available to you.

FBI attempts to solicit Tamerlan Tsarnaev and contacts with his family. The government has no evidence that Tamerlan Tsarnaev was solicited by the government to be an informant. As for information about any contacts between the government and other Tsarnaev family members, it appears from your letter that this information is already available to you through the family members themselves.

FISA/CIPA. We are aware of the legal requirements for the use of FISA-derived evidence and will abide by them.

To the extent that we have not responded to a request for discovery, you should consider this our declination.

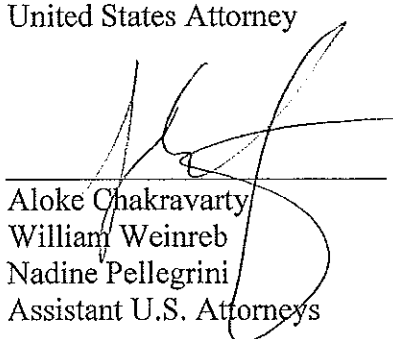
We are aware of our continuing discovery obligations and will produce any new discoverable information that we obtain.

To date, we have received no reciprocal Rule 16 discovery from you, even though the date for production of such discovery is long past. Without waiving our right to object to the admission of any evidence on grounds that it was not timely produced, we reiterate our request that you produce reciprocal discovery immediately.

Sincerely,

CARMEN M. ORTIZ
United States Attorney

By:


Alope Chakravarty
William Weinreb
Nadine Pellegrini
Assistant U.S. Attorneys